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Human Rights At Home

By Anthony Lewis

BOSTON, Feb. 26—For 20 years, from 1953 to 1973, the C.I.A. secretly went through bags of international mail in New York and other postal centers, opened first-class letters to and from Americans and made copies. Altogether it copied at least 215,000 letters and fed 1.5 million names gleaned from the mail-opening project into computers.

Last August three citizens whose letters had been opened won a suit against the Government for invasion of their privacy. Federal Judge Jack B. Weinstein of Brooklyn awarded the three victims $1,000 each in damages. Judge Weinstein wrote:

"In this country we do not pay lip service to the value of human rights and individual dignity—we mean to live by our ideals."

The Department of Justice—Jimmy Carter's Department of Justice—is now appealing that decision. A department brief says it "will not argue that the actions of the C.I.A. in this case were legal or constitutional." But Federal law, it argues, gives the victims no remedy against the Government. And in any event, $1,000 in damages was "excessive."

The case is one more example of a depressing trend in the Carter Administration. While the President and others rightly talk about the importance of his human rights policy abroad, the Justice Department reacts with insensitivity and pettifoggery on issues of civil liberty at home.

One thing made this an especially compelling case. Although the final decision in damage suits against the Government is left to judges, Judge Weinstein had an advisory jury hear the evidence and give its opinions. Three jurors wanted to award $10,000 to each plaintiff, one suggested $2,500 and the other eight called for $5,000.

In effect, there was an extraordinary statement of public feeling about Government wrongdoing. Some jurors, when polled, said specifically that it was important to show the Government it could not trample on people's rights and get away with it. "It was instructive," Judge Weinstein said, that jurors of sharply different backgrounds all found that the mail-opening victims had "suffered substantial damages."

The three people involved in the case had no idea originally that their mail had been opened. Each made a general request under the Freedom of Information Act to see what the C.I.A. had under his or her name, and was told that a personal letter was in the files. Then each sued.

¶Norman Birnbaum, professor of sociology at Amherst, wrote to a faculty member at Moscow University in 1970 about an upcoming conference on the sociology of religion. The letter was opened and four copies distributed to various C.I.A. units that had, it was said, an "interest" in correspondence to and from Moscow University.

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'The Divine Right to the Une

By M. Northrup Buechner

Following the November election for Mayor of New York City, departing top-level executives of the Beame administration put in claims for thousands of dollars in accumulated overtime pay.

On Dec. 13, by a margin of 33 to 7, the New York City Council voted itself a 50 percent increase in pay.

On Jan. 13, in the second week of his administration, Mayor Koch signed an order authorizing $5 million in raises for city management executives.

These actions were taken when contract negotiations with the city's unions were imminent; while the city was again petitioning the Federal Government for financial assistance; amid general public recognition that assistance would be necessary to avoid bankruptcy; in the face of repeated warnings that Congressional support would depend on giving at least the appearance of fiscal prudence.

To an outsider, the irresponsibility of these actions must have been astounding. The average New Yorker, however, was not surprised and took it in stride. Why? Because he is used to it. Because those actions were only the most recent applications of the attitude that rules and is destroying the greatest city in the world. It can be called "the divine right to the unearned."

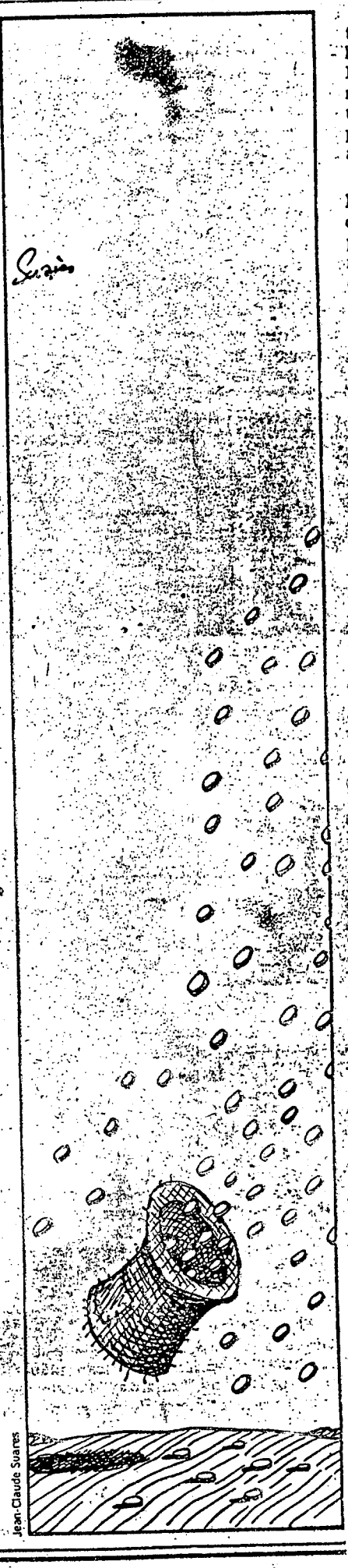
The most widely accepted application of this idea is welfare. There, it is explicitly held that to be in need gives one a right to what one has not earned. The essence of the welfare state is implementation of this principle by government force; taking from the haves and giving to the have-nots.

While this ideology is draining this country's productive energy, it is most widely and deeply held in New York City. New York's welfare programs and benefits significantly exceed what is offered elsewhere. While police, fire and sanitation services were cut to the bone for the fiscal crisis, welfare payments went untouched.

The most ominous application of the divine right to the unearned occurred during last summer's blackout. "We need it," was a typical looters' snarl. And, eliminating the middleman of government welfare payments, they seized what they wanted.

The divine right to the unearned was also behind the response to the looting by the city's intellectual leaders: perfunctory condemnation drowned in passionate "explanations" excusing the looting as "understandable" because of the poverty and unemployment of the looters.

The origin of the divine right to the unearned is the morality of altruism. Altruism holds that the individual's primary moral obligation is to help others. The writer Ayn Rand has shown that this means that those others have a moral claim on one's weath, energy, life.



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Senor Carter, Si!

By Andres Oppenheimer

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¶Mary Rule MacMillen wrote in 1973 to a well-known dissident whom she had met on a visit to the Soviet Union. His name was on a C.I.A. watch list. Because the letter was personal, it was agreed at the trial that the name would not be disclosed.

¶B. Leonard Avery had a letter in 1968 from his son, who was an exchange student at a Soviet University. The C.I.A. made three copies and sent one to the F.B.I., which had "an interest in U.S. exchange students in Russia."

The jury suggested that the Government apologize to the three victims, and Judge Weinstein held the damages to $1,000 on condition that it do so. He said that would help restore "faith in our Democratic institutions." Last November Stansfield Turner, the C.I.A. director, wrote to "express my regret at any intrusion into your privacy." He added an assurance that the agency is not today opening mail in U.S. postal channels.

Then the Justice Department decided to appeal. Its brief argues that these suits are barred by a provision of the Tort Claims Act excluding claims against the Government for damages suffered when an official performed "a discretionary function."

Judge Weinstein held that that exception did not apply when an official act was illegal, as he found the mail-opening was. He said.

"There is no discretion under our system to conceive, plan and execute an illegal program."

The Government brief also argues that this case falls within a Tort Claims Act exclusion of suits for "loss, miscarriage or negligent transmission of letters." It says that these letters "miscarried."

Of course the Justice Department has the right to appeal. The question is whether it is wise to do so in such a case—wise to press an argument as petty as the idea that opening and copying personal letters is just "miscarriage" of the mail.

There is a special irony in this case. Many victims of Government illegality have sued the individual officials responsible. Attorney General Griffin Bell regards such suits as too burdensome. He has proposed legislation to bar them and make everyone sue the Government itself for damages. Here three people did exactly that, and Griffin Bell tells them that they may have a right, but they don't have a remedy.

ABROAD AT HOME

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Jean-Claude Suares

Senor Carter, Si!

By Andres Oppenheimer

A few months ago, when I returned to Argentina after a year on a scholarship in the United States, I was surprised to find the same picture in many people's homes.

It wasn't a portrait of Carlos Gardel, the top Argentine tango hero, nor of Juan D. Perón, the late dictator. It was a picture of Jimmy Carter, with an American flag behind him.

Since 1977, when he began his human rights campaign, Mr. Carter has gained a popularity in many South American countries that no other American President has enjoyed since John F. Kennedy. Although he is frequently criticized by the official Argentine press for allegedly interfering in the internal affairs of the country, Mr. Carter's autobiography, "Why Not the Best?", Spanish translation, is sold by the thousands in Buenos Aires bookstores and newspaper stands. In Once, the Buenos Aires garment district, one wholesaler sells "Jimmy" T-shirts in many colors and designs.

The emerging Carter cult has reached Argentine liberals, who were traditionally anti-American and for whom Uncle Sam had always been an imperialistic, bloodthirsty ogre. The liberals find themselves in the uneasy situation of equally opposing the brutal terrorism of the guerrillas and the cruel repression of the secret police.

Since no political activity is permitted in the country, the liberals have no way of pressing the Government to take a stronger stand on human rights violations. Suddenly Mr. Carter has emerged as their unexpected ally.

A journalist with whom I worked at Siete Dias, one of Argentina's leading magazines, and who now lives in Mexico, recently wrote me a letter saying: "We have to admit it. North Americans are not as nasty as we always thought." This is the same man who had been arrested in 1973 for throwing stones at the United States Embassy in Buenos Aires during a demonstration against Washington's involvement in the military coup that ousted President Salvador Allende Gossens in Chile.

Likewise, when Rosalynn Carter visited Brazil last June, university students all over the country went on strike to protest against the military Government, and some tried to get a private interview with her. A few years earlier, the threat of violent demonstrations by Brazilian students had caused Henry A. Kissinger, then Secretary of State, to cancel a scheduled visit.

The 400,000 Jews who live in Argentina have good reasons to trust President Carter. They appreciated his efforts to obtain liberty for Jacobo Timmerman, Zionist and former publisher of the newspaper La Opinión, who is he has never stood trial and was being held in prison "at the disposition of the executive power" although cleared of criminal charges by a military court considering alleged financial irregularities.

Despite the general feeling that neither President Jorge Rafael Videla nor his closest staff members are anti-Semites, Argentine Jews fear that many young officers in the armed forces have strong anti-Jewish sentiments.

As a member of the Jewish community in Buenos Aires put it: "At the moment, we can't say there is an anti-Semitic explosion in the country. But there is something not kosher floating in the air, and Mr. Carter's speeches can't do anything but good."

When I returned from Argentina to the United States last fall, I found, to my surprise, that it had become a popular sport among American journalists to attack Mr. Carter's human rights campaign. It was said that the President condemned human rights violations in South American countries but didn't stand against similar abuses in other parts of the world strategically more important to the United States, such as South Korea.

It is true, President Carter is inconsistent. But isn't some morality in American foreign policy better than no morality at all?

The idea that President Carter is interfering in the internal affairs of the countries he accuses of violating human rights is also unacceptable. Intervention was, for instance, the landing of 40,000 Marines in Santo Domingo, in 1965. President Carter's rights campaign, in the case of Argentina, is nothing other than building international pressure against certain right-wing groups in the armed forces who abuse political prisoners and are beyond the control of their own Government.

Journalists and policy-makers in the United States should be aware of President Carter's rising popularity in the rest of the Hemisphere. The long-term effects of his human rights campaign are still to be seen, but Mr. Carter may have already gained some important results. At least he has begun to end a traditional dogma of the South American intelligentsia—to be, unconditionally, anti-Yanqui.

Andres Oppenheimer, an Argentine journalist, is a student at Columbia University Graduate School of Journalism.

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